

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 398 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and  
MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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JAYESHKUMAR P VALAND

Versus

STATE OF GUJARAT

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Appearance:

MR P.M.VYAS for Petitioner

MR K.P.RAWAL, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

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CORAM : MR.JUSTICE J.N.BHATT and  
MR.JUSTICE A.K.TRIVEDI

Date of decision: 16/06/98

ORAL JUDGEMENT PER BHATT,J.

Does the fortune smile at the appellant-accused ? The fate of the conviction appeal is inevitably founded upon our extensive assessment of the facts and intensive appraisal of our legal survey of evidence on record.

Shortly and simply stated, the facts of prosecution case have been that the appellant and the wife of deceased accused No.2 Manjula Patel had illicit intimacy and relationship and deceased Dinubhai was pushed back from behind by accused No.1 as a result of which, deceased Dinubhai fell in the well while he was taking water from the said well on 28.3.1989 between 3 and 3.30 early morning (a.m.) . The incident occurred in a field situated at village Vayad in district Sabarkantha.

The informant Kantilal S.Patel, the uncle's son of the deceased had informed the police and pursuant to the information given by him, initially the police recorded incidental death being case No. 5/89 under section 174 of the Code of Criminal Procedure, 1973. Upon investigation, it was found that there was a case of murder. There was also a motive for commission of the offence. Therefore, an offence came to be registered under section 302 read with section 34 of the I.P.Code against the appellant-accused No.1 and the wife of the deceased Manjula, being original accused No.2 who came to be acquitted by the trial court.

The defence of the accused persons was of total denial. The prosecution placed reliance on the oral evidence of the following witnesses:

- 1.Kantibhai Shankerbhai,ex. 20
- 2.Bhikhabhai Saburbhai,ex 22
- 3.Babubhai Shankerbhai,ex 23
- 4.Bachubhai Ramchandbhai ex.24
- 5.Mulsinh Mansinh, ex.25
- 6.Bhikhabhai Sankalbhai ex.26
- 7.Dr. Ishwarbhai Revandas,ex.28
- 8.Haribhai Prabhudas ,ex.29
- 9.R.D.Marathe, ex30.

to substantiate the charge of murder against both the accused. The prosecution also placed reliance on the following documentary evidence ;

1. Inquest panchnama ex 9
2. Panchnama of Scene of offence,ex 3. 7
3. Panchnama ex, 15
4. Complant, ex. 27

The trial court, upon assessment of the facts emerging from the record of the case found the appellant-accused No.1 guilty for the offence under Section 302 of the IPC and sentenced him to suffer imprisonment for life and acquitted accused No.2- wife of the deceased giving

benefit of doubt. The trial court, therefore, reached the conclusion that there was murder of deceased Dinubhai by accused No.1, the appellant herein by giving him a push from behind when he was taking water from the well after harvested wheat crop was collected in the tractor hired by both as there was joint interest in view of partnership in sharing the crop. As a result of the push, deceased Dinubhai who was aged 23 fell in 20' deep well. It was also found by the trial court that there was motive for commission of the crime of murder. The trial court mainly placed reliance on the evidence in the form of extra judicial confession in absence of any direct evidence. It may be stated at this juncture that the venue of the offence is the field wherein the well is situated and the time of offence was between 3 and 3.30 a.m. early morning. The trial court, after evaluating the evidence of prosecution, placed reliance on the extra judicial confession made by the appellant and other supporting circumstances. It may also be mentioned at this juncture that the trial court found that accused No.2, wife of the deceased Manjula is entitled to the benefit of doubt and therefore, she came to be acquitted from the charge under section 302 read with section 34, IPC. No acquittal appeal is filed by the State. Original accused No.21, partner of the deceased in sharing crop, has come up before this court challenging the legality and validity of the impugned judgment and order of sentence recorded in sessions case No. 37 of 1990.

A short but interesting question which, therefore, arises for our consideration is-as to whether the evidence in the nature of extra judicial confession made by the appellant before two witnesses which is the foundation stone of conviction and resultant sentence has been, in any way unimpeachable? In the absence of any direct evidence, conviction can be founded upon the evidence of extra judicial confession. Flax circumstantial evidence recorded by the prosecution and accepted by the learned trial Judge in the form of extra judicial confession made by the appellant before two witnesses has received, in our opinion, legal stamp of approval of the provisions of section 24 and other relevant provisions of the Indian Evidence Act, 1872.

Law of confession has been very well expounded and extensively examined in a number of decisions. Though confession as such is not statutorily defined either under the Criminal Procedure Code or under the Evidence Act, the expression is very well established. Confession is

nothing but admission of guilt by the accused. Confession may be of two types, (i) judicial confession and (ii) extra judicial confession. We are concerned with the extra judicial confession. The appellant made the extra judicial confession before two prosecution witnesses viz. P.W.2-Kantibhai Shankerbhai, ex. 20 and P.W.3-Bhikhabhai Saburbhai, ex. 22 who was the Sarpanch, who have fully supported the prosecution case. The learned trial Judge has found the evidence of these two witnesses reliable and trustworthy. Despite repeated serious attempts to convince us that the reliance placed by the trial court on their testimony is not supportable and acceptable were made, they have not been found favourable with us in light of clear, cogent and consistent evidence of both the witnesses.

We have extensively gone through the testimonial collection and documentary evidence relied on by the prosecution and examined the relevant proposition of law relating to law of confession and we have found that the impugned judgment of conviction and order of sentence recorded by the learned trial Judge against the appellant need to be affirmed and confirmed being legal and supportable.

Section 24 of the Evidence Act provides circumstances under which confession made by the accused would become irrelevant. A conjoint reading of provisions of sections 24, 25 and 26 leaves no manner of doubt that there is policy and purpose behind incorporating such provisions in the Evidence Act so as to see that the confession made by the accused before a police officer is excluded from consideration by the court of law and to see that the accused is stopped from very well known torture and tension employed by . Nonetheless, confession of the accused before persons who are not officer or any authority and popularly known as extra judicial confession can be used as evidence against the accused if it successfully stands trial and scrutiny under the provisions of Section 24 of the Evidence Act.

Extra judicial confession can be relied upon and it is not always essential that there should be corroboration, if found-

- (i) voluntary,
- (ii) reliable,
- (iii) without any allegation of inimical terms,
- (iv) trustworthy ;
- (v) unbiased;
- (vi) in a natural incidental way ;

- (vii) showing the accused only as a perpetrator
- (viii) nothing which may militate against him'
- (ix) clear and unambiguous inspiring confidence of the court, and
- (x) appearing and natural.

In such factual scenario, no search of corroboration is warranted.

It has been stated that extra judicial confession cannot be relied upon without some corroboration from independent sources. This submission, with respect, in our opinion, is without any merits. The evidence in the form of extra judicial confession if undergoes successful scrutiny of the aforesaid aspects, can be relied on for the purpose of holding the accused guilty even without other independent corroboration or circumstantial evidence. Corroboration to the extra judicial confession in all cases is sine qua non is neither just nor reasonable proposition. If extra judicial confession is found to be unbiased, untainted coming from the evidence of trustworthy and reliable witness who have stood the test of cross-examination against whom there is no remote suggestion or allegation of inimical, terms can be based for holding the accused guilty.

In fact, extra judicial confession is like any other evidence if proved under section 3 of the Evidence Act. If it is successfully proved by the prosecution that version stated by the witnesses was truthful and voluntary version of the accused referable to incriminating and his complicity, the same would form basis for conviction. It is not the quantity but quality which matters in evaluating the evidence of prosecution even in case of extra judicial confession either under section 24 or 30 of the Evidence Act.

It must be remembered, even at the cost of repetition that extra judicial confession appears to have been treated as weak type of evidence but the settled legal position on this score undoubtedly would go to show that there is no rule of law or rule of prudence requiring corroboration even in case of truthful, voluntary, untainted, unbiased statement of accused in the form of extra judicial confession. In fact, it has to be proved like any other fact and once it is proved under section 3 of the Evidence Act, it is like any other piece of evidence which can be accepted without any supportable or independence source of evidence. In fact, conviction can be founded upon solely on extra judicial confession without corroboration. We are reinforced by the

Honourable Apex court in view of the decision rendered in the case of State of U.P. vs. M.K. Anthony, AIR 1985 SC ,48 . In the aforesaid decision, it has been clearly observed that there is neither any rule of law nor of prudence that evidence furnished by extra judicial confession cannot be relied upon unless corroborated by some other credible evidence. It is further observed that the courts have considered the evidence of extra judicial confession a weak piece of evidence .If the evidence about extra judicial confession comes from the mouth of witness/ witnesses who appear to be unbiased not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it, then after subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, if it passes the test, the extra judicial confession can be accepted and can be the basis of a conviction . It has further observed that in such a situation to go in search of corroboration itself tends to cast a shadow of doubt over the evidence. If the evidence of extra judicial confession is reliable, trustworthy and beyond reproach, the same can be relied upon and a conviction can be founded thereon. The observations made by the Honourable Apex court in para 15 of the aforesaid judgment are directly attracted and squarely relatable to the facts of the present case.

The aforesaid view is further fortified and reinforced by the Honourable Apex court in its decision in State of A.P. vs. Gangula Satya Murthy, 1997 SCC (cr.) 325 wherein it has been clearly propounded that even minor disparity and discrepancy with regard to facts etc. made by the witnesses would not be sufficient to reject the evidence and conviction can be founded upon it.

In the aforesaid decision, the accused had made confession before two witnesses of the locality as in the present case. There was some disparity between the time of making confession to the witnesses and the time mentioned by the police on the strength of station record. Such error was held to be not sufficient to discard the evidence. Therefore, in our opinion, the decision is fully applicable to the facts of the present case.

Though there is no case of retracted extra judicial

confession in this appeal before us, we are inclined to place on record that even retracted extra judicial confession or by saying by the accused in his statement before the court that he is innocent and that he had not committed any offence, would not be sufficient enough to throw away the evidence in the form of extra judicial confession over board. This view is very much supported by the decision of the Honourable Apex court in Pakkiriswamy vs. State of Tamil Nadu, 1997 SCC (Cri.) 1249. We may mention that in the said decision, the whole scheme of Section 24 was clearly expounded and it was observed that even retracted extra judicial confession if on facts found reliable, can be accepted. The accused in this case had made extra judicial confession which was recorded by the Village Assistant in presence of Village Officer. The accused did not make any reference of such confession in his statement recorded in the court. He was merely saying that he was innocent and had not committed any offence. The same was held to be not such as can be termed as retraction. He was merely saying that he was innocent and had not committed any offence. The same was held to be not such as could be termed as retraction. Not only that, retracted extra judicial confession can be relied upon for finding the accused guilty.

The aforesaid proposition that extra judicial confession can become the sole basis for conviction even in a serious offence like one under Section 302 without any further corroboration is also affirmed, confirmed and accepted by the Honourable Apex court in its latest decision in Vinayak Shivajirao Pol vs. State of Maharashtra, AIR 1998 SC 1096. We have dispassionately gone through the ratio of the said decision. In that case, there was charge of murder. The extra judicial confession made by the accused who was Sepoy in the army, came to be accepted without any corroboration as it was found to be made voluntarily by the accused before an officer who was found to be not inimical to the accused. It was held further that the extra judicial confession can become the sole basis for conviction even in case of charge of murder and no further corroboration is necessary. We find from the said decision that earlier seven decisions are also considered and the aforesaid proposition is approved.

It, therefore, becomes evident that conviction can be based upon extra judicial confession. without corroboration from independent source if it is found voluntary, reliable, unbiased, without any inimical term and trustworthy representing real version of the accused

indicating his complicity.

Notwithstanding aforesaid clear proposition of law, the prosecution has successfully proved various other aspects and circumstances which profusely lend support to the version of the prosecution. Therefore,, in our opinion, there are manifest circumstances emerging from the record of the present case which we would hasten to articulate herein:

- (i) There was serious dispute between deceased Dinubhai and accused No.1 Jayeshkumar as they were partners and sharers in crops in the field of the deceased;
- (ii) It is clearly established from the evidence of Sarpanch Bhikhabhai Patel,ex.22 and Kantibhai ex.20 that there was quarrel in the immediate past before the occurrence of the incident between accused No.1 and the deceased with regard to sharing of expenses of crop of wheat and muster seeds.
- (iii) It is also established without any shadow of doubt that accused No.1 was taken out of grain pot popularly known as 'Kothi' which is about five and half feet high and 2 feet in width as per panchnama ex.19 ,with other utensils wherein food might have been taken during the period accused No.1 remained hidden therein in the house of the deceased after the incident, as original accused No.2 Manjula shared intimate relationship and it is found from the evidence that the deceased had found both of them a week before the incident in a compromising position in his house.
- (iv) Evidence of Driver of the tractor Bachubhai Ramchandbhai,ex.24 and the owner of the tractor Babubhai Shankerbhai ex.23 clearly goes to show that the deceased and the appellant had been seen last in the said field along with the tractor and the extra judicial confession came to be made on the same day.

In short, there was deep seated intention for commission of the offence. Apart from illicit relationship between original accused No.1 and original accused No.2 ,wife of the deceased, there was serious controversy about sharing of crop grown jointly by the deceased and accused No.1 .It would be appropriate to mention at this juncture that tractor of Bachubhai Shankerbhai ,ex.23 was jointly hired



for harvesting the wheat crop on that day and it was done before the incident on the previous night and followed by the incident between 3 and 3.30 a.m.

The extra judicial confession was made before Sarpanch Bhikhabhai who was holding a responsible post and against whom there was slightest allegation of animosity. He has rightly been relied upon by the trial court . So is the case of prosecution witness No.2 Kantibhai Shah.No doubt, he happens to be cousin of the deceased. But relationship with the deceased would not affect reliance on his testimony as no relative would ordinarily be interested to let off the real culprit and involve innocent.

It would,therefore, be very well visualised from the testimonial collection which we have extensively gone through and the relevant proposition of law narrated hereinbefore that though conviction can be founded upon sole evidence of extra judicial confession, the prosecution has successfully laid various circumstances and other aspects coming from different sources leading to reinforce the prosecution version beyond reasonable doubt .Therefore, in our opinion, extra judicial confession made by the appellant-accused before the two witnesses who have testified before the trial court successfully, has been rightly corroborated by various circumstances. Therefore, in our opinion, there is no slightest doubt that the findings in the impugned judgment and order are justified requiring no interference.

Reliance on the decision of the Honourable Apex court in Raj Kumar vs.Union of India, AIR 1991 SC,45 by the learned advocate for the appellant is of no avail for the simple reason that the ratio propounded therein is not attracted in light of the facts of the present case. There is no question of making any inadmissible extra judicial confession before the police authority.Therefore, the said decision cannot take the case of the appellant any further.

In view of the aforesaid discussion , catalogue of circumstances clearly emerging from the testimonial collection and documentary evidence,we are fully satisfied that the impugned order of conviction and sentence is fully justified and we find no merit in this appeal and we are left with no alternative but to dismiss it . Accordingly, it is dismissed.

